IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.322 OF 2006

Mr. Sampat Shankarrao Birje .. Petitioner

versus

Shri Bahuballi Zilha Nagari .. Respondents

Sahakari Patsanstha Maryadit

and others

...

Mr. R.S. Ghadge i/b. A.S. Desai for petitioner

CORAM : D.G. KARNIK, J

DATED :21st September 2006.

P.C:-

1. Heard learned counsel for the petitioner.

2. This contempt petition is filed alleging breach of the order dated 5th June,2006 passed by this Court in Writ Petition No.3203 of 2006. The respondent no.1 had filed proceeding under Section-101 of the Maharashtra Co-operative Societies Act against the

petitioner for recovery of dues. The petitioner made an application purportedly under Section-9A of Code of Civil Procedure contending that the claim of the respondent no.1 was barred by limitation and therefore the issue regarding limitation should be framed and decided as preliminary issue. That application was rejected by the Assistant Registrar and his said decision was confirmed in revision by Divisional Joint Registrar. Aggrieved by the order of Divisional Joint Registrar the petitioner filed a Writ Petition bearing W.P. No.3203 of 2006 in this court. By an order dated 5th June,2006 the writ petition was rejected summarily. This Court held that the issue of limitation should be decided along with all other issues and the Divisional Joint Registrar had rightly rejected to entertain the application. This court in terms confirmed the decision of Divisional Joint Registrar.

3. At the hearing of the said writ petition, it was pointed out that in some other similar matters this Court had directed that application under Section-9A of civil procedure code should be decided first. On that being pointed out, the court observed that, if

that was so, the Assistant Registrar may club all proceedings together and decide the preliminary issue as directed in other writ petitions. This observation by the court only enables the Assistant Registrar to club the proceedings pending before him with other proceedings. It was not command or direction by the court that the Assistant Registrar must club all the matters and should decide the issue as preliminary issue. If that observations was meant as a command or directions of the court, then court would not have dismissed the writ petition. In para 2 of the decision this court specifically observed that, the decision of the Assistant Registrar as confirmed by the Divisional Joint Registrar was correct and therefore dismissed the writ petition. Thus by not hearing the issue regarding jurisdiction as a preliminary issue, the Assistant Registrar has not committed any breach of the order of this Court. For these reasons contempt petition is dismissed summarily.

(D.G. KARNIK, J.)

D